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THE ROLE OF EQUALITY OF OPPORTUNITY IN MARKET ECONOMIES

by

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A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "The Role of Equality in Market Economies" submitted by Jude Carlson in partial fulfillment of the requirements for the degree of Master of Arts.

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Date December 12, 1979

ABSTRACT

The role of equality of opportunity in a market economy is to avoid invidious outcomes in the competition for positions. Far from being a sine qua non of justice, equality of opportunity serves only to mitigate the effects of basic injustices in the competition for positions; a just society should be able to dispense entirely with equality of opportunity as an explicit social doctrine.

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My argument begins with a consideration of the nature of opportunities as I believe that this points out some philosophically significant restrictions on what we can take equality of opportunity to mean.

Opportunities are sometimes cast in terms of chance. 'Chance' in the sense in which it is a synonym for 'opportunity' does not tell us anything more about the nature of opportunity than the native speaker of the language already knows. As Black notes:

> In paradigmatic situations common sense conceives of 'chances' in the plural, as so many openings for bringing about a designated outcome (compare the common expression 'Give me a chance', where 'chance' has roughly the meaning of 'opportunity').[1]

There is another sense of 'chance' akin that of 'probability' which enters into some accounts of equality of opportunity, but never into accounts of 'opportunity'. An opportunity is not a statistical probability, but 'equality of opportunity' and 'equal probabilities of success' are sometimes taken to be synonymous, perhaps through a failure to take note of the two senses of 'chance'. Consequently, in arguing that opportunities are not probabilities I am trying to forestall such accounts of equality of opportunity, rather than argue against a position which it appears no one has ever expounded. Presumably, if opportunities could be explicated in terms of probabilities, X would have an opportunity to do or have something if there were some likelihood that X would do or have that something, given X's motivation and ability to overcome any pertinent obstacles. This interpretation suits well some of our talk about opportunities -- "Joe has a good opportunity to be a major-league hockey player." There are however a number of paradigmatic uses of 'opportunity' which this interpretation cannot accommodate:

1. In Britain everyone has the opportunity to obtain legal counsel when arrested.
2. All males in the Philosophy Department have the opportunity to try out for the department hockey team.

These two cases are not essentially a matter of likelihoods and probabilities, for they seem to be guaranteeing the existence of a certain state of affairs, rather than estimating the chances of a particular outcome obtaining. Secondly, the latter statement would have to be taken to be saying something about the likelihood of a wide variety of people of diverse ability and motivation trying out for the hockey team, some of whom would never try out and some of whom would be virtually certain to try out for the team; however this variation precludes a generalization about the likelihood of their doing so. Furthermore, nothing can be said about the likelihood of their doing so without taking account of their motivation in one way or another, but the statement's truth is not in fact dependent on their motivation in any way.

Some philosophers argue that not only must the holder of the opportunity be in a position to choose to refuse to exercise the opportunity, he must also be in a position to perform the desirable action or have the desirable good if he so chooses. On these terms virtual equality of achievement would be required by equality of opportunity. Lloyd Thomas, for instance, works with the assumption that "[o]ne has an opportunity to do something or have something provided that one can do it or have it if one chooses. One has no opportunity to do something or to have something if one cannot do it or have it even if one wishes to."[2] This characterization, however, may be too hasty. I have chosen to finish my

Master's thesis, but if I don't succeed in doing it, no one will be willing to excuse me on the grounds that I did not have the opportunity to do so. The Americans chose to win the hearts and minds of the Vietnamese, they did not succeed, but they did have the opportunity to do so.*

Campbell offers a definition of 'opportunity' which takes into account some of these complexities:

> An opportunity may be said to occur when an agent is in a situation in which he may choose whether or not to perform some effortful act which is considered to be desirable in itself or is a means to the attainment of some goal which is considered to be desirable. .... To say that an agent has an opportunity clearly presupposes that there are no insurmountable obstacles to the action or acquisition in question.[3]

This definition leads Campbell to the view that equality of opportunity is a matter of presenting persons with equally effortful actions to achieve similar objectives.[4] However, this conception of opportunity does not match up with what we call opportunities in a number of respects.

First of all, we sometimes have occasion to say that an agent has an opportunity even though he is unable to take advantage of that opportunity because of what could reasonably be considered an insurmountable obstacle:

---

*It might be argued on Lloyd Thomas's behalf that in these cases the goals that were chosen were to work for a Master's degree and to try to win the hearts and minds of the Vietnamese, that the respective parties were successful in accomplishing their goals. It is impossible, the argument would go, to have <u>opportunities</u> to <u>have</u> things where effort, judgement and the exercise of skills are necessary to obtaining these things; we have only opportunities to strive for these kinds of things. However ordinary usage does not support this view. Furthermore we would have to admit that human opportunities were very meager, consisting of only opportunities to try to achieve goals (which would be numerous but not very significant) and opportunities to have one or the other of a kind of good which we are already entitled to and will be provided on demand, such as the opportunity to have either french fries or a baked potato with a meal we have already contracted to pay for. We would not be able to say with propriety that persons had opportunities to become educated, work productively or enjoy themselves.

1. Joe has the opportunity to explore the Himalayas (since he is in excellent shape, he has the leisure, and he finally got the permission of the Indian government), but he can't raise the necessary money.

2. Now that he is too old and frail to make the trip, Joe has the opportunity to explore the Himalayas (since he finally has the money, the leisure, and the permission of the Indian government).

In these situations opportunities can be said to exist even with the knowledge that insurmountable obstacles prevent their being exercised. Equally it could with perfect propriety be <u>denied</u> that opportunities exist or existed in these situations; denying their existence is compatible with the facts presented and does not misrepresent the situations. The point is not simply that it is possible for persons to have legitimate differences of opinion in this respect, that whether an opportunity exists in a particular situation is a matter of judgement, but rather that the judgement is relative to the presence or absence of obstacles pertinent to the context in which the judgement is made, and in different contexts different obstacles will be pertinent. (As far as the Indian government is concerned, it has given Joe the opportunity to explore the Himalayas, regardless of what Joe's bank manager decides about lending him the necessary money. If Joe is fit, then he has the opportunity as far as Joe's doctor is concerned.)

If, on the other hand, the conception of an opportunity as a matter of having or doing something desirable if one chooses excludes as opportunities certain situations which we ordinarily refer to as opportunities, it also includes as opportunities situations which we would be reluctant to call opportunities. Does a divorced woman of average intelligence with four children, a junior high school education and no regular income have the opportunity to become a lawyer? Likely only her ex-husband arguing before a judge that his child-support payments should be lowered

would be tempted to claim that she did. Yet each of the obstacles to her undertaking this career can be overcome. Similarly, this conception commits one to saying that in the 1950's American Blacks had the opportunity to obtain senior government positions -- and that they did not get them because either they did not want them, they did not put enough effort into getting them, or they were not willing to make sufficient sacrifices to overcome the obstacles. This claim is made, but either in ignorance or defiance of the facts, or merely to make the point that it was not absolutely impossible for them to attain such positions.

Thirdly, where the good in question is scarce or unique, so that persons must compete to attain it, we sometimes speak of some or all of the competitors having the opportunity to attain it, even though only one competitor or a fraction of the competitors can in fact be successful. For instance, we could say that all the finalists in the Tchaikowsky Competition have the opportunity to win (they are all excellent pianists, they have been successful in the preliminary competitions, and so on) even though it is possible for only one of them to win, and none of them can win solely by virtue of his choosing to have the prize or choosing to make the appropriate efforts and sacrifices. We are told as children that we have the opportunity to become Prime Minister when we grow up, but even a Horatio Alger would concede that we all are not going to become Prime Ministers by choosing to do so and trying very hard. Lloyd Thomas suggests that in these cases where "there are not as many opportunities available as there are persons who desire them" what persons have is not "the opportunity to enjoy that which is competed for", but "the opportunity to compete"; at any rate, this is what "linguistic propriety could lead one to say".[5] This suggestion may work, but only by endowing 'compete' with

the complexities which he earlier denied to 'opportunity', by specifying conditions for what it means to <u>really</u> compete, lest it be said trivially that everyone always enjoys equality of opportunity since we can choose to compete for virtually any kind of opportunity.

The difficulties with Campbell's interpretation of opportunities are not simply those of extension. We usually have no difficulty in deciding whether a person has a particular opportunity provided we are roughly familiar with the circumstances of the case and the context in which it is being discussed. On Campbell's view, however, we ought to have more epistemic difficulties: if, for instance, a person unknown to us won a trip to Disneyland in a soap contest, we would not likely hesitate to say that the person then had the opportunity to go to Disneyland, yet we would not want to claim that there now were no insurmountable obstacles to that person's going to Disneyland. We just would not know enough about that person's situation. Secondly, even if we knew a great deal about the prize-winner's circumstances, how clear could we be about which obstacles might be insurmountable given that person's ability and willingness to exert effort, make sacrifices and incur costs? However, these epistemic problems do not arise; as far as we would usually be concerned <u>anyone</u> who has won the contest has won the opportunity to go to Disneyland.

Finally, the removal of obstacles which are by no means insurmountable if often said to bring opportunities into existence: warm weather provides me with the opportunity to paint the house, changes in legislation could give Canadians the opportunity to smoke marijuana, and the donor of a scholarship offers someone the opportunity to study. In these cases neither the inclement weather, legal penalties nor lack of funds are insurmountable obstacles.

When we compare the situations of persons who are said to have a

particular opportunity A with those who do not have opportunity A, when we ask why a person who did not have opportunity B now does have opportunity B, and when we try to justify our saying that one person but not another has a particular opportunity, we are likely to talk in terms of the impediments, constraints, interferences and restrictions which are or are not present, which might or might not impede the performance of the action or the acquisition of the good in question. As was argued earlier, whether any of the obstacles operative in a particular situation are insurmountable does not always explain whether the situation is spoken of as an opportunity, nor does the likelihood of their being overcome. What makes the counter-examples cited against these interpretations prima facie convincing is not anything that the obstacles which are or are not operative have in common, nor their collective force, but the fact that we know what obstacles are at issue in each discussion; we know the speaker's justification in that particular context for saying that an opportunity does or does not exist. Whether the speaker allows that a particular opportunity exists depends on whether certain obstacles of siginficance in that particular context to him or his audience are absent. If he is to avoid being misunderstood, these obstacles must, explicitly or implicitly, be made reasonably evident to his audience, for there is no such thing as an opportunity tout court.

What emerges is an analysis of an opportunity as a situation conducive to (but not necessarily ensuring) a particular person's realizing a particular (desirable) goal by virtue of the absence of particular obstacles pertinent to the context in which the situation is being discussed. Opportunities accordingly can be considered a kind of freedom, for fundamentally they are a matter of the freedom of an agent or agents from something to

do or have something.* They are thus analogous to other kinds of freedoms -- to liberties, rights, powers, immunities, privileges and entitlements, and with them form a rough continuum. At one end are liberties -- in a sense the weakest kind of freedom -- which assure an agent the possibility of doing or having something without any formal prohibition, but not necessarily without obstacles posed by the interference of others.+ Rights follow, guaranteeing the agent not only the absence of prohibitions but also the absence of interference from others -- hence their normative force. At the other end of the continuum are powers; powers accord the agent the possibility of doing or having something without prohibitions, interference from others and lack of co-operation from others as obstacles. Entitlements, suggesting the absence of all formal restrictions, perhaps fall between rights and powers.[8] This characterization of various kinds of freedoms is crude and does not hold for all cases, but it is offered only as a perspective on the nature of opportunities. Opportunities, it would seem, belong in the middle of the continuum since generally the obstacles removed are circumstances of time and place, economic means and personal fitness, which would normally preclude a person from doing or having whatever is at issue. (We do say "I had no right to do x but I did it anyway" -- it may still be possible to do x even though there are legal or moral barriers -- but not "I didn't have the opportunity to do x but I did it anyway".) However, as argued above, we do not know which obstacles are not operative when it is said that someone has an opportunity without information about the circumstances of the opportunity or the context of the discussion; the obstacles are usually from this range but may also overlap with those excluded by rights and powers.

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*I take MacCallum's characterization of freedom as a triadic relation to be a sound and widely accepted one.[6]

+H.L.A. Hart's explication is used here.[7]

What primarily defines the basic types of freedoms and distinguishes them from one another are the kinds of obstacles which each rules out.* The goals which they respectively enable do not by themselves tell us about the nature of the freedoms, since we can distinguish between a liberty, right, opportunity and power to do or have the same thing. (The exception occurs when the goods in question are scarce; not all can be offered the right to have them, but all can be offered the opportunity to get them. Alternatively, some could be extended the right to have them.)

Which obstacles remain as barriers to attaining the goal affect our judgement about whether a particular freedom exists de facto if and only if they are obstacles whose removal is definitive of that freedom. If they are not obstacles whose absence is allegedly guaranteed by that freedom, then they have no bearing on the existence of that freedom, although they may determine whether the freedom is exercised. For instance, as a citizen who is over eighteen, a resident of the country and not a certified psychotic, I have the right to vote in the next federal election.+ If, however, illness becomes an obstacle preventing me from voting, I cannot complain that I did not really have the right. ("If I really had the right the government would send officials to register the votes of the bedridden.").

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* T.D. Campbell has argued that "the main basis for making the distinction" between opportunities and liberties "is that in the case of opportunities but not always in the case of liberty in general we can always sensibly ask -- and expect that answers can be given to our question -- what choice is presented to the person who has the opportunity and what effort is required to take advantage of it".[9] Passing over his assumption that the main basis for distinguishing between two types of things can be found in all of the first type being x and only some of the second type being x, counterexamples abound to his claims about liberties and opportunities.

+Accuracy has given way to succinctness in this description.

Nor can I complain that the right to vote was denied me ("The government did not send anyone to register my vote."). My exercise of the right would merely have been thwarted, since the obstacle which prevented me from voting is not one whose removal is definitive of the right to vote in this country. On the other hand, should I be prevented from voting by being abroad during the election, my right to vote is then neither denied nor thwarted but non-existent, for I would no longer be in the class of persons to whom the right applies, i.e., persons currently residing in the country. The point I wish to make here is that opportunities, like other freedoms, are said to occur when particular and not necessarily all obstacles are removed, and this is of significance when the nature of equality of opportunity is discussed later.

Many formulations of equality of opportunity focus on the obstacles which remain to be overcome, rather than on the obstacles removed. The obstacles are seen to function as criteria for selecting persons with the appropriate characteristics -- those who overcome the obstacles thereby warranting or showing their fitness for the good in question. On this view, opportunities exist where X can do y with only $z_1 \ldots z_n$ as obstacles; if, for any reason other than the operation of obstacles $z_1 \ldots z_n$ X is unable to do y, then X did not really have the opportunity to do y. To claim that only the obstacles specified remain is to make a large claim, in view of all the fortuitous and unforeseen factors that can come into play; to attribute opportunities to persons would be foolhardy. Substituting 'mainly' or 'primarily' for 'only' would circumvent this criticism, but would not account for the value which we attach to guarantees of the existence of certain opportunities. Analogously, consider the worthlessness of a bill of rights which

focussed on only the main obstacles to the exercise of the rights in question. The difficulties of defining opportunities in terms of the obstacles which remain will be looked at in greater detail below, in the context of particular conceptions of equality of opportunity.

II

I want to discuss what equality of opportunity entails in one type of situation, in the competition for the more advantaged positions in a market economy. My reason is not that broader ideals are less significant or unrealistic, but that it is too difficult to discuss them. For instance, Brian Barry proposes an equality of opportunity "for satisfying whatever wants people may happen to have"[10]; Schaar sees equality of opportunity as an expression of the view that "no member of the community should be denied the basic conditions necessary for the fullest possible participation in the common life"[11]. These conceptions, however, use 'equality of opportunity' as the shibboleth for entire conceptions of justice, not just the allotment of positions within a particular society. Furthermore, these conceptions have not been linked to the history or present practice of equality of opportunity, and it is the ideal as it has been practised that I want to focus on.

In a market economy the more general distributive question of whom should be allotted what and for which reasons do not arise as such. Instead, there is primarily the question with which equality of opportunity is concerned, i.e., how should the background conditions which affect who is assisted or hindered in the competition for positions be arranged. Given that persons are perceived to differ in their talents and willingness to put their talents in the service of others, other persons will want to bargain with them for the use of their skills; some skills accordingly may draw larger incentives, and so scarce advantaged positions are created. Since they are advantaged, more people will want them and be willing to compete for them. Given these circumstances, it

is positions rather than salaries or jobs qua sets of tasks and responsibilities that are at issue, for only in a non-market economy can jobs and salaries be allocated independently. Equality of opportunity is frequently said to be concerned with the allocation of positions, but in the context of a market economy the allocation must be understood to be effected by broad economic and social forces and instutitions, since the advantaged positions do not exist independently of them.

Equality of opportunity has usually been presented as a guarantee to all members of a particular society concerning the conditions for access to the advantaged positions. Whether in fact the conditions do hold for all members is another matter: gains in equality of opportunity have been made by acknowledging that certain kinds of persons previously denied equality of opportunity do in fact count as members of society and should be accorded the same access as others to the advantaged positions, as well as by altering the conditions for access. Typically legislation securing equality of opportunity adds to "all persons" the flourish "without regard to race, religious beliefs, colour, sex ..." and so on to stress that these factors do not restrict the class of persons to whom the guarantee applies.*

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*Restrictions on this class of persons are not usually explicit, be it for reasons of elegance of formulation, hypocrisy or prudence. The exclusion of certain groups is sometimes sanctioned however. Alberta's 'Individual's Rights Protection Act' says in the preamble that "it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights, without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin ....". Section 28 of this act defines 'age' as "any age of 45 years or more and less than 65 years".

The claim that the opportunities are provided to all persons in the society cannot give much content to the notion of equality of opportunity, since any characteristics of persons could be allowed to operate as obstacles and this would in effect exclude certain types of persons from access to the advantaged positions. (That the guarantee is to all persons does however allow the claim that the guarantee provides some sort of equality: as Raz notes, "in a sense most principles can be regarded as principles of equality simply in virtue of their generality".[12]) Which obstacles are ruled out by equality of opportunity, which factors are not allowed to act as hindrances in the competition for positions, is then the focus of its content. Their identity cannot be determined by appealing to a priori principles of equality since it is the ideal underlying a social practice which is at issue. Given that it is a slogan of longstanding judicial, theoretical and rhetorical use, establishing a meaning for 'opportunity' and 'equality' would not make apparent what 'equality of opportunity' refers to, any more than an understanding of 'participatory' and 'democracy' elucidates the meaning of 'participatory democracy'. Furthermore, as Benn and Peters for instance have argued, "out of context 'equality' is an empty framework for a social ideal....";[13] 'equality' is a term of approbation used to distinguish differences in treatment which should, for one reason or another, be tolerated, if not defended, and those which should be abolished.[14] My contention is that the differences which have not been found tolerable in the competition for positions are those which are invidious, which stigmatize one sector of society or another, and create odium, envy and ill-will. That this view accords with the historical and contemporary practices carried out in the name of equality of opportunity and with the ideals they invoke needs to be shown.

Since the origin of the term is obscure[15], it is difficult to describe the history of equality of opportunity without in a circular fashion picking out those events which support the conceptions being argued for. Schaar[16] credits Plato with giving the principle its first statement but different rationales prompted his meritocracy than have inspired contemporary campaigners for better equality of opportunity legislation. The meritorian makes instrumental use of equality of opportunity policies, while the advocates of equality of opportunity per se are looking for a principle of justice that will bring fairness to the allocation of positions. The demand of the French revolutionaries for "la carrière ouverte aux talents", however, is typically cited as the first stirrings of the movement for equality of opportunity.[17] In the United States Jefferson advocated a natural aristocracy based on "virtue and talents" in contrast to an "artificial aristocracy founded on wealth and birth".[18] The measures which have satisfied the demands, however, have not been commensurate with the rhetoric. The French bourgeoisie removed the role of aristocratic birth in the competition for positions but did not rule out financial position as a barrier to the exercise of talents. Jefferson instituted universal primary education in Virginia and abolished the right of entail and primogeniture, but excluded his slaves from the aristocracy of talent. The concern in practice typically has not been to match persons with positions but to rule out one kind or another of obstacle thought to be undesirable. This is borne out by a cursory look at the sorts of measures which have subsequently been carried out in the name of equality of opportunity. Wealth has been made a less visible obstacle through provision of free secondary education and subsidized post-secondary education, and of loans, grants and scholarships. In the United States

efforts are made to equalize the quality of primary and secondary school in the inner cities and the suburbs, but the questions of making the quality of the universities more uniform is not typically raised in this context. Stiff inheritance taxes are imposed in Britain lest the advantages of inherited wealth be reflected in the distribution of positions -- but the effects of wealth acquired through other means are not curtailed in the name of equality of opportunity. Native speakers of French and English are proportionately represented in the Canadian federal civil service to ensure equality of opportunity, but those who speak only a third language are excluded. In West Germany, by contrast, civil service positions are allotted to ensure that the major political parties are proportionately represented -- but the members of political parties considered 'radical' or 'extremist' are excluded. The United States has an intricate system to provide equality of opportunity in the hiring procedures of firms and other institutions receiving federal funds, yet the measures apply to only certain minority groups, to Mexican Americans for instance but not to Polish Americans or Jews.

It is hard to construe these policies, implemented for the sake of equality of opportunity, as designs to bring talent to the surface rather than rule out certain types of obstacles to success. At least four kinds of explanations could be offered for the seeming disparity between the slogans of equality of opportunity, which call for doing away with all obstacles to the rise of talent, and the practice, which selectively removes obstacles:

> 1. In such sensitive areas governments must move cautiously, by piece-meal measures, and strike where the evil is most strongly felt. Financial constraints too require a piece-meal approach.

2. Characteristics which have not been ruled out as illegitimate grounds for advancement are in fact indicators of talent, of pertinent job skills; for instance, it is only rational that the civil service prefer candidates competent in the language in which they have to work, and bar those who, for whatever reason, cannot function well in that language.

3. These measures are hypocritical and protective of vested interests. They should not be taken as good-faith efforts to apply the ideal of equality of opportunity.

4. These policies show that the purpose of equality of opportunity is not to search out talent, give it the means to develop and assure that it is exercised; rather it is to rule out invidious obstacles, obstacles which set one sector of society against the other, with the implication that the one is inferior to the other. At each stage in the transformation of equality of opportunity protests are made on behalf of a group until then disadvantaged in the competition for positions. What else can be said on their behalf other than that they too are capable of filling the advantaged positions, and why not let anyone thus capable have the chance of holding them? The slogan is not a distinterested one of efficiency experts.

The first three explanations together (but not any one individually) could explain the peculiarities of the policies in practice that I have cited; the last explanation by itself can account for them all. The plausibility of these competing explanations will be looked at later. At this point all I hope to have shown is that the basic conception of the nature of equality of opportunity arrived at here, i.e., that equality of opportunity guarantees the absence of invidious obstacles, does match the history and present practice of equality of opportunity.

III

Most conventional analyses of equality of opportunity do not treat equality of opportunity as a type of freedom, or right,* i.e., as a requirement that certain obstacles to certain goals be removed for all, but as a requirement that allotments of positions be patterned in a certain way. These analyses consequently focus on the criteria for selecting persons with the characteristics needed to produce the desired pattern, i.e., on the obstacles which the competitors must overcome to obtain the advantaged positions. These analyses can be crudely characterized in terms of three basic positions, which frequently appear as successive stages in arguments for equality of opportunity: that socio-economic positions be allotted on the basis of relevant characteristics; that the chances of success of those handicapped in the competition be improved; and that everyone should have an equal chance of success. These conceptions have their intuitive appeal, and coincide to some extent with the rhetoric and practice of equality of opportunity. However, the arguments for them are shakey. In this section, representative arguments for these conceptions will be looked at, and the succeeding section will deal with the sorts of societal arrangements they entail. For ease of reference, these conceptions will be referred to as the determinate conceptions, since they require that all factors affecting the outcome of the competition be controlled so that a right outcome is achieved. In contrast, the conception I am arguing for will be called the indeterminate conception, since it focuses on the absence of certain constraints and seeks to avoid certain undesirable outcomes rather than aim at a right outcome, as is the case with other systems of rights and freedoms.

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* It is something which takes the form of a right or freedom, and not necessarily something which we ought to have as a matter of right.

Rawls's argument in Section 12 of A Theory of Justice is fairly representative of those which conclude that equality of opportunity requires that positions be allotted on the basis of relevant characteristics only.* Rawls begins with the proposition that, at a minimum, careers should be "open to talents":[19]

> .....the reasons for requiring open positions are not solely, or even primarily, those of efficiency. I have not maintained that offices must be open if in fact everyone is to benefit from an arrangement, for it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them. Although access is restricted, perhaps these offices can still attract superior talent and encourage better performance. But the principle of open positions forbids this. It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefitted from the greater efforts of those who were allowed to hold them. They would be justified in their complaint not only because they were excluded from certain external rewards of office such as wealth and privilege, but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.[20]

Being excluded from the external rewards and intrinsic satisfactions of the advantaged positions is an evil which falls equally upon those formally excluded from the positions and those who are in the end denied them for whatever reason. The advantaged positions are by definition scarce, and so will be denied one way or another to most people: Rawls adduces no reason for the denial being more unfair because it is embodied in law rather than informally in the selection procedure itself or the background

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*The argument he presents in Section 12 is not the one which would be put forward in the original position.

conditions of society.* It might be claimed that an explicit denial of access is more of an affront to the dignity of all members of the group thereby excluded, but some, like Nozick, think that such denials buffer the dignity of those who would be excluded from the advantaged positions by allowing them to believe that but for the outright denial they too could have been successful.[21] The appeal of Rawls's reasoning here lies not in the principles he invokes but in the predilection of the reader to assume in such a context that the exclusion is on the basis of birth, sex, or race etc., on grounds which we find repugnant. Were persons formally denied access to the advantaged positions because they were grossly incompetent or because they did not meet some arbitrarily chosen criterion such as being born on a Sunday, there is nothing in Rawls's argument for fair equality of opportunity to indicate why these arrangements would be unfair in the competition for positions.

The next step in Rawls's argument is a development of the open position principle, i.e., the principle that careers should be open to talent. Since this principle does not require any measure to effect

> ...an equality, or similarity, of social conditions except insofar as this is necessary to preserve the requisite background institutions [i.e., equal liberty and a free market economy], the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets -- that is, natural talents and abilities -- as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the

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*Rawls, in a footnote, appears to acknowledge as much: "natural aristocracy is a possible interpretation of the two principles of justice ... an ideal feudal system might also try to fulfill the difference principle".[22]

> system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.[23]

If this is the problem of the open-position provision, then the next step should be to alter the distribution so that it is in accord with some moral precept or other (a move which Rawls rejects in another section for various reasons[24]). But Rawls has given us no reason for believing that arbitrariness from a moral point of view is a fault in these circumstances; arbitrariness is a defect only when it is in defiance of an accepted principle or procedure[25], and Rawls does not offer a principle or procedure which is not arbitrary in this context.

To rectify this alleged injustice, Rawls introduces the principle of fair equality of opportunity which requires that positions be allotted according to talent and motivation, irrespective of the economic status of the family into which a person is born. This principle is supposed to ensure that positions "are not only open in a formal sense", so that all have "a fair chance to attain them".[26] If the principle of careers open to talent is to be faulted for being arbitrary from a moral point of view, then surely this move can only highlight the arbitrariness of the distribution by making it unequivocally a strict function of only two arbitrary factors.*

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* Elsewhere, in the context of the original position, Rawls associates arbitrariness with not having "some rational connection with the advancement of human interests broadly defined",[28] and so it would seem that a distribution of positions according to talent and motivation would not be arbitrary, since efficiency is connected with human interests broadly defined. However, at the outset of his argument for equality of opportunity Rawls explicitly denies that the reasons for requiring open positions are primarily those of efficiency. In the context of this argument the notion of non-arbitrariness he states he is working with is one which treats "everyone as a moral person, and which does not weight men's share in the benefits and burdens of social co-operation according to their social fortune or their luck in the natural lottery".[29] This notion is unworkable in this context, however, where it is assumed that there is a hierarchy of unequally advantaged positions.

It is hard to see how the fairness of the competition can be changed by reducing the number of arbitrary factors which exclusively determine the outcome. In support of the principle of fair equality of opportunity Rawls points out that it "seeks ... to mitigate the influence of social contingencies and natural fortune on distributive shares"[27]; however, given the premises of his argument, his view of where the injustice lies in the distributive scheme, mitigating the influence of talent and motivation and allotting positions according to wealth and social position is no less reasonable.* But the whole exercise of "mitigating the influence of" arbitrary factors is futile, as though by doing so some 'non-arbitrary' factors could come into play on the basis of which an allotment could be made.+

There are some suggestions that Rawls's conception of equality of opportunity does not end with his fair equality of opportunity. For instance, Rawls says his principle of redress "holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions".[32] And a propos genetic planning Rawls remarks "we might conjecture that in the long run, if there is an upper bound on ability, we would eventually reach a society with the greatest equal liberty the members of which enjoy the greatest

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*Rawls admits as much: "There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fotrune."[30] However, he does not revise his argument accordingly.

+The assumption that a fairer outcome will emerge by these means is a common one in arguments for equality of opportunity, and can be found as far back as Sidgwick: "No doubt, it would be possible to remove, to some extent, the inequalities that are attributable to circumstances, by bringing the best education within the reach of all classes, so that all children might have an equal opportunity of being selected and trained for any functions for which they seemed to be fit: this seems to be prescribed by ideal justice, insofar as it removes or mitigates arbitrary inequality."[31]

equal talent."[33] ('Genuine equality of opportunity' is distinct from 'perfect equality of opportunity'[34], the latter referring to a perfectly satisfied patterned conception where success is entirely a function of one's talent and motivation.) The argument he presents for equality of opportunity, however, has no bearing on 'genuine equality of opportunity'. Rather it seems to spring from another conception of equality of opportunity than Rawls has argued for, from the view that all should have equal chances of success.

Lloyd Thomas's argument takes a different tactic, beginning with a formal definition of 'opportunity' and 'equality of opportunity', and then choosing principles which give it content. Since on his view one has an opportunity only if one can have the good in question if one chooses, equality of opportunity in the competition for positions bears on the opportunity to compete for these positions, rather than enjoy them; since the goods are scarce it is not possible to say that all can have the advantaged positions if they so choose. Alternatively, he proposes, equality of opportunity could be construed as "fair competition for scarce opportunities".[35] (When the goods at issue are not scarce, Lloyd Thomas holds, then equality of opportunity means that "everyone should end up with an equally valuable cluster of opportunities".[36]) Consequently his theoretical framework gives little guidance about how equality of opportunity in the competition for scarce positions should be construed -- and as it turns out he appears to ignore this framework anyway when he sets out to construct his conception.

He starts by citing a few examples of what are normally considered violations of equality of opportunity, where persons are denied positions because of their religion, sex, nationality and economic status. The principle operative in these cases he claims is the following:

> The criteria of selection employed must include only characteristics relevant to the utilization of the opportunity to be made available.[37]

The initial problem with this principle is that those who are doing the selecting in cases where equality of opportunity is violated do see religion, sex and so on as relevant to the utilization of the opportunity. Williams claims to the contrary that these factors are not in themselves thought to be relevant but that they are inaccurately associated with characteristics which all would agree upon as relevant, and that relevancy can, therefore, serve as a neutral benchmark for assessing the fairness of the allotment of positions.[38] Williams's claim may be accurate in many cases; those who try to justify inequalities of opportunity usually appeal to more conventionally acceptable criteria, but these latter criteria are not themselves immune from the sorts of biases which equality of opportunity is normally seen to correct. For instance, social class was once a conventionally accepted criterion of ability, a criterion which eventually gave way under the demand for equality of opportunity to those of formal education and IQ, but at present facility in scoring well on tests of academic achievement and IQ is being questioned as a legitimate indicator of fitness to hold the advantaged positions. As Benn and Peters argue, one specious standard of relevance is discarded in the name of equity only to be replaced by a new standard which eventually meets the same fate.[39] Standards of relevance also vary with the current goals of the economic system. Need or merit, for instance, may or may not figure in criteria of relevance depending on what these goals are. According to Rawls's system the goals of a just society require that advantaged positions go to those with the kind of talent and motivation that will benefit the least advantaged -- but a libertarian such as Nozick would be quick to challenge the alleged

neutrality of this potentially invidious standard of relevance and to reject it as a violation of equality of opportunity. However there is no neutral goal from which neutral standards can be derived.

Secondly, the problem remains that all that Lloyd Thomas's examples of inequality of opportunity suggest is that invidious distinctions not be made among competitors, and this requirement is far less sweeping than the requirement that only 'relevant' factors be considered. Nothing is adduced from his notion of fair competition that would explain the gap between the nature of the instances cited and the larger generalization (that only relevant factors should be considered) used to rule them out.

His next step is to describe a hypothetical case in which the advantaged position is awarded only on the basis of relevant characteristics. The successful candidate however has had more advantages in the past because of the wealth of the family into which he was born, which enabled him to excel in acquiring relevant characteristics, while the unsuccessful candidate did not. Only, Lloyd Thomas claims, if these advantages had been equally good "with regard to the effects that they have on factors relevant to the present competition"[40] could the two candidates be said to have enjoyed equality of opportunity. He does not offer either implicitly or explicitly any basis for this claim: if it is an appeal to ordinary usage, then it is mistaken, for while inherited wealth may not be condoned as an advantage in obtaining positions, equality of opportunity is not invoked in a manner which would suggest that no one should have any advantages at all over the others in the competition for positions. (That this stipulation is inconsistent with ordinary usage is perhaps acknowledged by his alluding to it as constitutive of "'true' or 'real' equality of opportunity".[41]) He elaborates:

> The chances of a person securing a new opportunity is seen as resting upon a pyramid of past opportunities which have already been enjoyed. But it is not only past opportunities which will affect a person's present chances of securing new opportunities: inherited potentialities and talents, early environment and so on, will also have this kind of effect. Having made the point more general, we can now state a second principle for competitive equality of opportunity.
>
> Second Principle:
> Equality of opportunity in a certain competition C exists only if possession of all the factors (F1, F2 ... etc.) which affect success at C, and the possession of which is open to human manipulation, are so manipulated as to ensure that all competitors in C possess those factors to an equal extent.[42]*

However, when these factors are possessed by everyone to an equal degree they can no longer be qualifications for positions, since "credentials are by definition unevenly distributed", as Jencks notes.[43] The absurdity of the second principle is heightened when it is seen to apply to <u>all</u> competitions for any scarce goods as it must on Lloyd Thomas's terms. Parity among all competitors in all competitions could be achieved only if persons were made uniform in most respects. Consequences aside, the argument is formally weak. The following characterization does not misrepresent it: Some factors which affect success should not affect success; other factors affect success also; therefore no factors should differentially affect success. No arguments of this form ought to be convincing.

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*On Lloyd Thomas's grounds this principle is likely a non-starter, given that he argues there is no one sort of opportunity such as positions of power, wealth and status which most persons strive for, quoting Nozick's statement "...life is not a race in which we all compete for a prize which someone has established; there is no unified race, with some person judging swiftness".44 (Lloyd Thomas is forced into this position by his definition of 'opportunity' discussed above which makes it difficult to avoid interpreting equality of opportunity as anything other than the requirement that everyone have equally good options.

There may be an implicit guiding notion lurking between the lines which gives the argument a specious appeal, namely, that there is something in the nature of a fair competition or being 'really' able to compete for an opportunity which requires that the competitors be on a par with each other in certain respects, that in some sense they have an 'equal chance' of success. There is evidence for this in his discussion of the application of his two principles: "what is at issue here is a situation in which all of the factors relevant to success have been manipulated so as to ensure that all have equal chance [sic] of success".[45] Arguments explicitly directed to ensuring equal chances of success as a means to equality of opportunity will be discussed below.

Williams offers the most thorough argument for the position that equality of opportunity requires that the advantaged positions be allotted according to relevant criteria only and that persons should be enabled to satisfy these criteria. His argument begins with the premise that "a limited good shall in fact be allocated on grounds which do not a priori exclude any section of those that desire it".[46] As a basic principle of fairness, this dictum seems reasonable and matches well our intuitions about distributions under circumstances of scarcity. However, Williams explication of this principle leads to a conception of equality of opportunity alien to our initial intuitions. 'A priori exclusion', he says, cannot mean that there be no conditions which people must satisfy in order to obtain the good, but that "it must mean exclusion on grounds other than those appropriate or rational for the good in question".[47] This definition poses the problems discussed above of using relevance as a criterion. In addition, it does not have the same intuitive appeal as the original statement; it is not clear that what we mean by a priori in this context is

'inappropriate'; we think rather of peremptory exclusions which show no sense of due process. For different reasons, Williams is not satisfied with his interpretation as it stands:

> For it would follow from this that so long as those allocating grammar school education on grounds of wealth thought that such grounds were appropriate or rational..., they could sincerely describe their system as one of equality of opportunity -- which is absurd.
>
> Hence it seems that the notion of equality of opportunity is more complex than it first appeared. It requires not merely that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question, but that the grounds considered appropriate for the good should themselves be such that people from all sections of society have an equal chance of satisfying them.[48]

To reach this conclusion from the instance cited is rather like saying that it is unfair of a Tchaikowsky Competition entrant to deliberately slam a door on the fingers of a fellow competitor because the competitors would no longer have an equal chance of success. Williams gives no reason for believing that the wrongness of wealth influencing the outcome of the competition is in its preventing persons from all sectors of society from having an equal chance of success. For all that he says explicitly about why it is wrong that wealth influence the outcome, his solution might well perpetuate or compound the wrong.

Williams then turns to what is meant by 'section of society' in this interpretation of equality of opportunity.

> Clearly we cannot include under this term sections of the populace identified just by the characteristics which figure in the grounds for allocating the good -- since, once more, any grounds at all must exclude some section of the populace. But what about sections identified by characteristics which are <u>correlated</u> with the grounds of exclusion?[49]

Williams then describes a hypothetical case in which an allegedly appropriate characteristic stems from advantages enjoyed by only a particular economic stratum of society; this is a violation of equality of opportunity,

he claims, because there is a causal connection between the appropriate characteristic and another characteristic.

> It seems then that a system of allocation will fall short of equality of opportunity if the allocation of the good in question in fact works out unequally or disproportionately between different sections of society, if the unsuccessful sections are under a disadvantage which could be removed by further reform or social action.[50]

Unless such disadvantages are removed, he says, equality of opportunity is "cynical", "empty", "disingenuous" or ineffective.[51] This position is not tenable, however, since it is impossible to name an appropriate characteristic which is not correlated causally or otherwise with a characteristic which is not per se appropriate. On Williams's ground then, there could be no groups identified by appropriate characteristics which would not also count as "sections of society".* But because not all of the correlations can be broken or the disadvantages removed, the scarce goods would then have to be allotted according to those refractory characteristics which, as it happens, society cannot control. But this cannot be construed as an improvement on Williams grounds if the wrongness lies in the correlation with factors which are not appropriate.

Rather than unfolding the implications of the prima facie acceptable principle that "a limited good shall in fact be allocated on grounds which do not a priori exclude any section of those that desire it"[52], Williams has, through ad hoc definitions of its components and inaccurate identification of the wrongs involved in the instances of inequality of opportunity

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*By treating causal factors as determinants of what should be considered a section of society rather than what should be considered appropriate characteristics, Williams avoids being vulnerable to Nozick's and Hayek's observation that causal connection with a morally relevant factor may make an otherwise arbitrary factor relevant.[53]

he has cited, arrived at a conception of equality of opportunity which is counter-intuitive and remote from the original principle. Formally, it appears that Williams has arrived at his final statement legitimately, by defining '*a priori* exclusion', 'appropriate grounds' and 'section of society' respectively, However, *a priori* exclusion of sectors of society is taken to be exclusion on grounds other than those considered appropriate. If a ground is to be considered appropriate, then it mustn't exclude any sector of society. A sector of society is a sector of society which is not identified by a failure to meet the appropriate grounds unless it is also identified by characteristics which are correlated with the appropriate grounds (or which cause failure to meet the appropriate grounds), and which can be removed by social action. The definitions are not just inelegant but deviant.

Williams sums up his view of equality of opportunity in the following manner:

> [T]o give Smith and Jones equality of opportunity involves regarding their conditions, where curable, as themselves part of what is done to Smith and Jones, and not part of Smith and Jones themselves. Their identity, for these purposes, does not include their curable environment, which is itself unequal and a contributor of inequality.[54]

What Williams is then asking is that the allotment of personal characteristics (on the basis of which the allotment of unequal positions is made) be made as equal as possible and that the unequal positions be allotted on the basis of the more equal allotment of personal characteristics. It is hard to see what is thus gained. Williams claims this interpretation "points to a connection between the idea of equality of opportunity and the idea of equality of persons".[55] However, a society which allots scarce positions on the basis of allegedly "appropriate or rational" characteristics

over which neither the individual nor society has any control is far from what Williams earlier in his discussion takes to be the essence of egalitarian proposals, that is, the affirmation of "an equality which is believed in some sense already to exist, and to be obscured or neglected by actual social arrangements".[56]

Basically the three arguments for a determinate conception of equality of opportunity discussed above -- those of Rawls, Lloyd Thomas and Williams respectively -- have a common format:

> A. (1)Certain obstacles are ruled out as legitimate barriers to obtaining the advantaged positions.
>
> (2)Only 'relevant'/'rational'/'appropriate' obstacles are sanctioned in the competition.
>
> B. (3)Certain factors which affect a competitor's ability to overcome these obstacles are ruled out as legitimate determinants.
>
> (4)All factors which affect the competitors' respective abilities to overcome these obstacles and which are subject to human manipulation are required to be equalized.

None of the arguments successfully justify the move from the undisputed wrongness of the operation of particular obstacles or factors (lines 1 and 3) to the generalizations that state how to remedy the wrong (lines 2 and 4); the gaps are clouded over by the spuriously egalitarian appeal of the generalizations, as though equality of opportunity should be a pis aller for a more direct form of equality, the latter being notoriously difficult to argue for directly. None of the arguments successfully show how the remedies (lines 2 and 4) can overcome what the writers take to be the basic unfairness of inequality of opportunity, be it moral arbitrariness (Rawls), unfair competition (Lloyd Thomas) or the a priori exclusion of sections of society (Williams). I want to argue that these arguments fail to characterize accurately in the first place just which kinds of obstacles

are ruled out by equality of opportunity. Their characterizations include practices which are not seen to violate equality of opportunity and do not include practices which are seen to do so, as will be discussed below. Above all, by failing to see equality of opportunity as a requirement that certain obstacles not be operative, as a form of freedom, rather than a requirement that the outcome be exclusively determined by only certain characteristics, they flounder attempting to deal with the effects of socio-economic background: the indeterminate conception need only specify that invidious obstacles, including socio-economic background, should not affect the outcome either directly or indirectly, a large but not entirely unfeasible specification, while the determinate conception ends up having to make the requirement -- impossible to satisfy on any terms -- that only certain factors considered 'relevant', 'appropriate', or whatever affect the outcome directly or indirectly. (The latter requirement is qualified as in line 4 in light of the dictum that 'ought' implies 'can'.)

I want to argue that the indeterminate conception offered at the end of the previous section, that equality of opportunity requires that all should have the opportunity to obtain the advantaged positions without invidious obstacles, gives a satisfactory account of the concept in a single principle. An invidious obstacle is one which will lead to feelings of odium, ill-will, and envy, setting one sector of society against another, either because of the lines along which the resulting allotment falls or because of the very fact that it is tolerated or acknowledged as an obstacle in the first place. Rawls, Lloyd Thomas, and Williams have looked for normative principles which would explain why some obstacles are invidious and others not. My position, as will emerge, is that there

are no sound normative principles underlying the invidiousness, that invidiousness itself is the reason for certain obstacles being excluded in the name of equality of opportunity.

IV

The previous section discussed the strength and soundness of representative arguments for determinate conceptions of equality of opportunity. Here the conceptions will be looked at in terms of the policies they entail, in terms of how well they match practices carried out in the past and at present in the name of equality of opportunity, and of how desirable these policies are. To avoid the tedium of dealing with the slight variations in the three statements of the determinate conception presented above, the view that advantaged positions should be allotted to all persons only on the basis of their native talent and motivation (all other factors being manipulated so that they do not differentially affect the outcome) will be taken to be representative. (Rawls, Lloyd Thomas and Williams do, at later stages in their arguments, hold that the manipulation of all causal factors including genetic endowment is entailed by their conceptions of equality of opportunity; however, once persons are without 'qualifications' for positions, without different types and degree of native talent which variations in genetic endowment produce, the nature of the competition changes. This development of their positions will be dealt with in a succeeding section.)

Although appeals to the talent of those excluded from advantaged positions have figured in and continue to figure in demands for equality of opportunity, the precept that positions should be allotted according to talent does not embody the nature of equality of opportunity. Analogously, it would be a mistake to take the precept 'one man, one vote' as the essence of participatory democracy, even though the precept has been prominent in the struggles for greater participatory democracy. The slogan is at best misleading about the nature of participatory democracy, and may

even be advocating a policy which is not even necessary to its attainment. And just as Marxism has been identified with the slogan "to each according to his need" yet Marxist theory does not advocate the matching of donors with appropriately needy indigents as the means of eradicating poverty (although a Marxist may, as it happens, be in favour of such charity) so the history of equality of opportunity has not been one of breakthroughs in finding the most talented workers for an employer's money -- although incidentally this may have resulted. Rather equality of opportunity has been concerned with the erosion of certain sorts of barriers to the advantaged positions.

Far from requiring strict adherence to the criteria of talent and motivation or characteristics relevant to holding the position in question, equality of opportunity often takes precedence over these criteria. For example, many employers would rather not place women in key positions because they believe women are more likely to leave the job to marry or to have children, but to bar women from these positions would be a breach of equality of opportunity. Police forces are being required to alter their height and weight restrictions for applicants so that they will no longer exceed the female norm for height and weight even though being very tall and heavy-set make one a more effective member of the police force. Similarly it is sometimes thought unfair to refuse to hire persons handicapped in various ways by, for instance, epilepsy, diabetes or loss of limbs, even though their job performance will be impaired. Employers sometimes refuse to put qualified women and Blacks in supervisory positions because the White males under their supervision will not accept their authority and so render them ineffectual as supervisors, but such a practice is considered a denial of equality of opportunity. Conventionally accepted indicators

of talent for the purpose of allotting positions are sometimes adjusted in the name of equality of opportunity: IQ scores on some tests are adjusted so that males and females are on a par;[57] outcomes of the British 11 Plus examination used to be evened out between the sexes lest only forty per cent of grammar school places go to males on the basis of the raw examination scores;[58] and some American universities have established a policy of admitting equal numbers of males and females despite the fact that there is every reason to believe that the female applicants are on the whole more talented. Legislation taken to reflect the doctrine of equality of opportunity sometimes is interpreted explicitly as giving equality of opportunity priority over relevance. Indeed. the Equal Protection Clause of the Fourteenth Amendment to the American constitution (the injunction that no state "shall deny to any person within its jurisdiction the equal protection of the laws", which has been used to rule out discrimination in educational and employment opportunities) has been taken to mean that there are certain obstacles, such as race and sex, which can never be tolerated "no matter how reasonably they may be related to a legitimate public purpose".[59] It has even been admitted in a Supreme Court decision that precisely because the Amendment forbids the use of these sorts of obstacles that "the possibly most efficient method of securing the highest development of skills cannot be established by law".[60]

If equality of opportunity required the distribution of positions on the basis of talent and motivation alone, a number of practices which are totally foreign to the tradition would have to be adopted. For instance, society would be under an obligation to devise ways of regulating <u>all</u> factors affecting the assignment of positions, from the idiosyncracies of personnel managers and university selection committees, to the way in which

vacancies are advertized, to the expectations of success harboured by each competitor to the accuracy and validity of measures of aptitude. The number and complexity of these factors would be overwhelming, especially given the diversity in aptitudes required by the respective advantaged positions. But this need not show that the policy is absurd, only that it is extremely difficult to implement; although its complete realization may be in practice impossible, approximations to it may be acceptable.* Even as the extent of the control is beyond that normally thought necessary to provide equality of opportunity so are certain types of control needed to produce the correlation between talent and positions foreign to the idea. Continual re-allocation of jobs, for example, would be necessary as new talent came on the job market; rights of seniority and tenure would have to be abolished; and rapid economic growth would be necessary to ensure that there were sufficient advantaged positions to guarantee equally desirable positions to the equally endowed. Institutions which directly or indirectly affect the individual's economic status independent of his talent, such as unions, professional associations and employer monopolies would have to be abolished. Individually owned farms and businesses could not be handed over to whomever the owner chose.

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*As will be discussed below, there is good reason for finding some approximations undesirable: if only a relatively small number of factors are not controlled, then the outcome will be patterned after those factors and talent and motivation. Depending on which factors are not controlled, the outcome will be seen as more or less unacceptable by the competitors. The failure to match positions with only talent and motivation will be seen as the fault of society, not a matter of chance.

Citing these dire consequences of the determinate conception, it may be argued, is just a cheap shot, for few principles when taken to be administered in a Draconian, bloody-minded and unintelligent fashion come out well. There is no obvious reason for not taking the patterned conception, the argument would go, to be making the modest requirement that positions generally fall to whomever has the inherent capacity to perform the job well, is motivated to do so and happens to apply, without any sweeping, arbitrary distinctions among different sectors of society; once the inequality of opportunity affecting women, minority groups and so on is eradicated, the advantageous positions will be taken up by the suitably talented and motivated as a matter of course.* This arrangement, however, is more or less what the indeterminate conception prescribes, and any position between this and what the determinate conception requires is unsatisfactory because it would not rule out what are commonly agreed to be the grossest sorts of violations of equality of opportunity -- allotting positions 'more or less' upon the lines of talent is compatible with excluding people from the advantaged positions on the basis of their birth, race or sex. The upshot is that a supporter of the determinate conception can dispense with the less attractive consequences of his conception only at the expense of reducing his position to the indeterminate conception.

Given that the determinate conception focuses exclusively on the obstacles which ought to remain or which may be tolerated, it would seem

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*Jencks et al have shown that in contemporary North American society this does not happen as a matter of course, that when discriminatory practices are ruled out persons with equal cognitive skills, equal education level and equal family background do not end up in the same broad socio-economic range, that there will be nearly as much variation in their positions as in the population as a whole.[61]

to place violations of equality of opportunity because of a person's birth, race or sex on a par with violations stemming from inaccurate proficiency tests or hungover personnel managers, and while the latter events may be regrettable lapses of due process, they are far from warranting the opprobrium which falls on the former in contemporary Western societies. Imagine the situation of a social scientist who wants to compare the extent to which equality of opportunity has been achieved in various societies with fundamentally different cultures. On the determinate conception he ought to be interested only in correlations between measures of ability and measures of socio-economic position. However, two societies might have the same coefficient of correlation, one tolerating rampant racism but otherwise being as fanatical about measuring and promoting talent as the boy scouts, and the other eschewing all invidious distinctions in the allotment of positions but not zealously engaging in a search for talent. The social scientist who pointed to the similar coefficients of correlation as evidence that the societies were equally just with respect to equality of opportunity would be thought to be either perverse or deceptive. It is considered anomalous but not inequitable that the Gerald Fords became presidents and graceless twits become inordinately wealthy as real estate agents. That make-work projects give jobs on the basis of need rather than talent is not considered a violation of equality of opportunity. Journeymen take on apprentices as friendship or kinship inclines them rather than through a competition based on talent, and this practice is recognized as their prerogative. Persons who are terrified by dogs, dislike walking and cannot tolerate inclement weather are hired as letter carriers on the basis of IQ test results in the absence of a handier method of eliminating the thousands of competitors for the few

coveted positions, and whatever the accusations made against the post office are, defying equality of opportunity is not among them. That those in the 'helping professions' are not in socio-economic positions commensurate with either the talents of their members or the need to draw more and better qualified people to these professions is considered fitting by most. Failures to match competence with positions which are not considered breaches of equality of opportunity may be more common than failures which are; Jencks et al have argued that among homogeneous groups which have not suffered from discriminatory practices, 'luck' rather than family background, schooling, and conventional measures of competence plays the largest role in determining an individual's socio-economic position.[62] But the determinate conception makes no distinction between the operation of chance factors and the operation of bigotry, chauvinism and class differences in the competition for positions.

Given the concern to exclude the differential influence of social circumstances from the allotment of positions, it seems that the determinate conception is faced with a dilemma concerning the interpretation of 'talent', 'natural assets' or 'characteristics relevant to the utilization of the opportunity'. If, on the one hand, they are taken to refer to the individual's genetic endowment, then the conception is asking that positions be allotted according to a factor which we have neither the knowledge nor technology to measure. There is also the question whether this is a conceptually feasible project -- can the assets in demand by the market be expected to have a genetic basis? Can we for instance look for creativity, affability or dexterity in DNA chains? Finally, what of the talents which require early specialized nurturing -- can they be developed and made use of if they have no particular genetic foundation? If, on the other hand, talent is measured as it is manifested in the behaviour

of the individual, then environmental contingencies are given some play, and the conception can be taken to condone the worst sorts of violations of equality of opportunity as it is traditionally understood, such as a governing class with pervasive hereditary features as argued for by Burke.

V

As mentioned at the beginning of the previous section, there is a more developed version of the determinate position which emerges from the arguments of Rawls, Lloyd Thomas and Williams; fundamentally it expresses the idea that all should have an equal chance to obtain the advantaged positions. It comes to the fore in two ways. First of all, the equal chance conception is a development of the view that all factors affecting success should be equalized. Secondly, it can be seen as the implicit or explicit rationale for the view that positions should be allotted according to talent and motivation. Rawls describes fair equality of opportunity as stipulating "that all should have a fair chance to attain" the advantaged positions:

> It seems that even when fair opportunity (as it has been defined) is satisfied, the family will lead to unequal chances between individuals (§46). Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equality of opportunity inclines in this direction.[63]

Williams claims that the grounds considered appropriate for allotting scarce opportunities "should themselves be such that people from all sections of society have an equal chance of satisfying them".[64] Lloyd Thomas does not make explicit mention of equal chance, but this notion would explain the direction his argument takes and such statements of his as "only if those past opportunities had been equally good (with regard to the effects that they have on factors relevant to the present competition) would there be 'true' or 'real' equality of opportunity".[65] Others take it for granted that equal chance is the goal of equality of opportunity:

> One can work towards equality of opportunity in [a society in which there are differences between people which are objectively relevant to their ability to perform jobs] by eliminating formal barriers which are objectively irrelevant to job performance and by altering those disadvantageous features of environments which one knows how to alter.

> In doing these one could be working toward any one of a number of goals (equal chances for all for each job, equal chances for all over a lifetime, equal chances for all at 'the starting line', for example). One is not forced to choose between these interpretations and one is not forced to ask oneself whether it would be a good thing to achieve equality of opportunity in any of these senses. The goal is too remote for these questions to appear necessary.[66]

The equal-chance view is common in non-philosophical contexts also. Crosland, for instance, argues that "an aristocracy of talent is an obvious improvement on a hereditary aristocracy, since no one is in fact denied an equal chance";[67] "the essential thing is that each citizen should have an equal chance -- that is his basic democratic right".[68] Schaar characterizes equality of opportunity in the American social order as offering "everyone a fair and equal chance to find a place within that order".[69] One philosopher argues, somewhat enigmatically, that "all should have equal chances of success. For if all did not have equal chances for success, we would have no assurance that those who succeed do so through their own merit."[70] The notion is even espoused by some Communists:

> ...the democratic conception of equality as 'equal chances for everybody' is both positive and dynamic. It means the duty of the state to interfere in a positive way in the field of education, labour conditions, etc., in order to equalize the start of life and the conditions of competition, to make it 'fair play'.[71]

As argued in the first section, 'chance' in the sense of statistical likelihood or probability is remote from what we normally designate 'opportunities', so that 'equal chance' in the sense of equal probabilities cannot be a synonym for 'equality of opportunity'. Yet this does not prejudice the status of the view that all should have an equal chance of obtaining the advantaged positions (and that as it happens, appropriately or inappropriately, this practice is called 'equality of opportunity'). More substantive arguments have to be brought against it. Two conceptions

of this view can be distinguished: the better chance or fair-chance conception and the numerically equal-chance conception.

The former conception holds that by removing certain obstacles to success, by letting a person's talents shine through, equality of opportunity provides everyone with more nearly equal chances of attaining success. These measures, however, cannot bring about this result. Consider a lottery for a prize in which one thousand tickets are distributed to one thousand persons; each ticket is one of ten colours, one of ten shapes and bears one of ten numbers. The winning ticket will be identified by a particular colour, shape and number. Would removing one of the three criteria, say colour, as an obstacle, do anything to equalize the contestants' chances of winning, to improve the chances of those whose ticket is not the 'right' colour? Rather than only one hundred people having a chance to win on the basis of the shape and number alone of their ticket, then all one thousand would. However, there is only one prize, and the shape and number of the ticket will single out one hundred tickets, not one. If colour is dropped as a criterion, then other means of identifying a winner will have to be improvised, such as making finer distinctions in the criteria already employed (e.g., adding a decimal to each number) or adding another criterion (e.g., flavour). No one's chances are improved.

To move to a more pertinent analogy, take a hypothetical society in which there are one hundred persons, and five advantaged positions, from which females, who comprise half the population, are excluded. On the principle of insufficient reason then, the chances of a person attaining one of these positions are:

male 5/50
female 0

If sex is removed as an obstacle, then each person's chance on this principle is 5/100, and it appears that the equality of opportunity measure has indeed provided everyone with an equal chance of success. However, these positions, as in any market system, are allotted on the basis of qualifications, qualifications q. There are, say, ten persons in the society with this qualification q, five male and five female, so really the chances of getting these positions are:

male & -q	0
male & q	5/10
female & -q	0
female & q	5/10

The employers may hire these people on a first-come-first-served basis, in which case the chances of the qualified persons obtaining the positions will vary with their access to news of vacancies, the swiftness with which they can tender their applications, and so on. It is more likely, however -- although the same results ensue in terms of the equalization of chances -- that the employers, given that they are trying to attract the best candidates through monetary and other advantages, look for further qualifications which will lead to better job performance. These qualifications p will as a matter of course be adjusted so that they are just stringent enough to select the number of persons needed to fill the positions. (Indeed according to the determinate conception the employers are under an obligation to ensure that the advantaged positions go to the most talented or qualified.) The chances of success then are:

male & -q & -p	0
male & q & -p	0
male & q & p	1
female & -q & -p	0
female & q & -p	0
female & q & p	1

The distribution of chances before equality of opportunity was instituted was:

male & -q & -p	0
male & q & -p	1
male & q & p	1
female & -q & -p	0
female & q & -p	0
female & q & p	0

Ultimately, then, equality of opportunity has not meant an overall equalizing of chances, but only altering who will be successful. What have been equalized are the chances of success of the five people who have characteristics q and p; they now have the same chance whether they are male or female. Consequently, the belief that all should have better, fair or more nearly equal chances of success cannot serve as the rationale for allotting opportunities according to talent and motivation.

What can serve as a rationale for such an allotment is the belief that there should be "equal life prospects in all sectors of society for those similarly endowed and motivated", as Rawls sometimes describes his view.[72] This lacks the appeal of the former rationale, which suggests that the losers need only wait, like unsuccessful gamblers, for their number or their children's number to come up. But again, the "equal life prospects" slogan is only another way of saying that only the most qualified will be successful, and if you do not number among the most qualified, you will definitely lose.

The fair-chance conception provides a rationale for eliminating certain kinds of disadvantages such as initial socio-economic constraints from the competition for positions. The numerically equal-chance conception goes further, requiring that no one be disadvantaged in the competition, that all factors affecting success be equalized among competitors. It sometimes

emerges as the ultimate development of the determinate conception, of the view that the differential influence of all irrelevant or arbitrary factors should be eliminated. If the numerically equal-chance conception is to be coherent, the following conditions must hold: determinism is true, that "for any human event, including any human act or performance, there is some set of antecedent events, and some set of covering general laws, such that the occurrence of the event in question is fully explicable by reference to them"[73]; and the knowledge and technology needed to control all the determinants of success are within human reach. These two conditions must hold rigorously, without exception, for the inability to control any factor affecting success will lead to a distribution patterned after that factor, however inappropriate that factor may be, since it will constitute the sole basis for choosing between persons. Under the traditional determinate conception, failure to control an irrelevant or arbitrary factor will alter the degree to which the actual pattern conforms to the desired pattern, but under the numerically equal-chance conception the whole purpose of the exercise is undermined. Not only must these conditions hold rigorously, approximations to this conception cannot be considered improvements; any attempt which falls short of providing absolutely equal qualifications will be as unacceptable as the initial situation, since the outcome will be patterned on the basis of the uncontrollable factors. Consequently, it is unlikely on these grounds alone that this conception will ever appear as a policy option but since it is thought to be the epitome of equality of opportunity ("'true' or 'real'"[74] or "genuine equality of opportunity")[75] it warrants consideration.

To begin with, there is a fundamental incoherence in the demand that all qualifications, all factors relevant to success be equalized. It is

incoherent because success in obtaining the advantaged positions is, by definition, limited to only a few; if all factors relevant to success are equalized, then they can no longer be the factors relevant to success, for they will no longer, because they are uniform, characterize those who will be successful. Other factors which previously had no bearing on the outcome of the competition, be they 'irrelevant' personal characteristics, the whims of personnel managers, procedural rules (e.g., 'first come first served') or the outcomes of lotteries, will be determining who is successful. These factors in turn could be equalized so that they affected each candidate uniformly, but then new means would have to be found of designating the successful, and the process would go on without end.

It does not make sense in any case to equalize people's qualifications in order to distribute advantaged positions in a market society. Presumably the salaries and other perquisites attached to positions -- the factors which make positions advantaged -- function as incentives to attract suitably qualified people to positions, to allocate human resources to productive uses. If all persons were equally qualified, then differential incentives would not be necessary; it would not matter who filled the positions. Positions would then become uniform in terms of remuneration and perquisites.* With no advantaged positions to be allocated, the question of equality of opportunity would not then arise.

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*Each member of the labour force possessing identical qualifications is not a sufficient condition for incentives being identical. For example the duties attached to the position may be so repugnant that compensation is needed to bring anyone to the position. It could be said though that this compensation only has the effect of making the sum of advantages of the position equal to that of others.

Above all, equal chances of success cannot be produced by equalizing all the factors bearing on success. Chance outcomes are possible only where control is not exercised over all these factors. Consider the paradigmatic cases of equal chance, the toss of a fair die, where there is an equal probability that each possible outcome will eventuate. Certain factors affecting the outcome are equalized: the centre of gravity of the die is exactly equidistant from each edge, and each side has dimensions exactly equal to those of every side, and so on. Each time the die is tossed one side will rest face up, and over many consecutive tosses there is a tendency for each side to emerge face up an equal number of times. There is never a 'tie' or a 'stalemate', but not all of the factors determining the outcome have been adjusted in order that no one side of the die will be affected differentially in each toss. In a fair toss it is the unpredictable, uncontrolled, or 'fortuitous' factors that govern the outcome. In fact, the die could not be tossed in the first place if it were required that every factor having a bearing on the outcome be adjusted so that no one side is differentially affected; the die has to be tossed at some angle, with some thrust applied in some direction.

Can this sort of equal chance found in the toss of a die be replicated in the competition for advantaged positions? The test of whether the competition for positions provided equal chances of success to all would be, on analogy with the die toss, whether over a large number of competitions for positions each person tended to have the same number of successes as the other. However, since most persons end up occupying only one socio-economic position (and when they have successive positions each one is determined to some extent by its predecessor), and since the process of determining one's socio-economic position as an adult occurs over two or

three decades, this test is not appropriate. The 'toss' is not repeatable as it is with the die. As an alternative, the various outcomes for groups of persons with roughly similar characteristics could be compared; if they indeed do have equal chances of success, there should be the same proportion of successful to unsuccessful persons in each group as in the population as a whole.

The flick of the wrist and fingers which launches each die seems uniform to the naked eye; however, imagine an obese four-foot man tossing a yard-sized die weighing twenty pounds. Theories would soon develop about which moves made by the four-foot man led to which outcomes. If the major factors affecting the outcome of the present competition for positions were equalized as the major factors affecting the outcome of an ordinary die toss are, would everyone in the competition be thought to have an equal chance of success?

In contemporary western societies the factors which play the largest role in the outcome of the competition for positions are family socio-economic background, intelligence and the number of years of education received. If these factors were equalized, it would still be possible to identify groups of persons who were more successful than others, be they characterized by the quality of the schooling or health care they received, the parenting skills of their parents, or the kind of persons with whom they associated. Factors which have no bearing on whether persons have the qualities preferred by the market can also establish patterns in the outcome, such as recruiting and hiring procedures. The decisions of the market are large, slow and deliberate, and even though the bases for its decisions may become more and more refined, they are, because of their importance to each member of society, obvious and predictable. In fact,

the present determinants of success in western societies might have been considered 'fortuitous' compared to the grossly conspicuous bases on which advantaged positions were allotted in former societies, say feudal societies. When 'fortuitous' characteristics become the focus of the causal web, when they are made the sole basis for selection, the outcomes they produce are no longer seen to be fortuitous, unpredictable variations, and can no more be the basis for guaranteeing everyone an equal chance of success than can talent and motivation.

There are only a limited number of outcomes in a die toss. There are only six ways in which the outcome is described -- the results are not, for example, described as the product of thrust x at angle y. If, in a series of tosses, no one outcome occurs significantly more frequently than any other, then the outcomes are said to be the product of chance. In the case of outcomes in the competition for positions, there are an unlimited number of ways of describing the outcome. Whatever the outcome, it is still possible to describe it so that it is not neutral among different groups of competitors, so that it is seen to be biased in favour of those with the characteristics for which the market shows a preference.

Consequently, neither by making all the factors affecting the outcome of the competition for positions equal nor by equalizing all but the 'fortuitous' factors can each person be guaranteed an equal chance of success. If, however, a situation comparable to the toss of a fair die cannot be replicated in the market procedures themselves, the outcome of the competition can be made to depend upon the chance outcomes of independent contests, such as die tosses or lotteries.[76] Such a move would not, though, provide equality of opportunity but dispense with the need for equality of opportunity since the incentives which account for the great disparity in advantages among positions would no longer function, their role in allotting positions

having been made otiose by the lottery. Nonetheless this consequence need not be taken as a reductio ad absurdum of the equal chance conception, but a logical development, a desirable transformation or culmination of the conception.

A society which allows positions to be allotted on the basis of chance outcomes will not value efficiency highly: lotteries which give everyone an equal chance of ending up in any one position do not promote the development of talent, the matching of abilities with positions, and the satisfaction of individual preferences for particular kinds of work. But this only makes the system costly.

More importantly, is this arrangement what people want when they want equality of opportunity? There is an intuitive notion, common to contemporary westerners but difficult to explicate, that it is a matter of chance that a person is born into this or that particular family and station in life. (The notion is foreign to some feudal and caste societies, but is present in those which claim to pursue equality of opportunity.) If equality of opportunity were a matter of ensuring that each had an equal chance of ending up in the advantaged positions, then this notion ought to suffice; we would not see a need for another lottery. Rawls's persons in the original position, not knowing their respective places in society, class positions, social status or "fortune in the distribution of natural assets and abilities",[77] have an equal chance of ending up in the advantaged positions.* They do not see this equal chance as equality of opportunity,

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*Their positions have already been determined, but on the principle of insufficient reason their chances of being in any one of these positions is equal. Because their chances are equal, they have no rational motive for introducing arbitrarily discriminatory principles.[78]

nor do they find it dispenses with the need for equality of opportunity. They still find a need for a procedure to regulate their mobility among positions once they resume their positions in society, and this they call equality of opportunity.*

When persons press for equality of opportunity, they are not asking that chance play a larger role in determining their futures; they are asking for more control over their futures.+ As argued above, opportunities are a kind of freedom; that equality of opportunity should require that persons refrain from choosing among alternatives, taking initiatives, and making efforts would be ironic. That the goods in question are scarce however changes the worth of the opportunities, and subordinates choice, initiative and effort to competitive forces. Under these circumstances, the proponent of the equal-chance conception might argue, equality of opportunity becomes a matter of ensuring fairness in the competition, and this entails giving everyone an equal chance of success.

Margaret Mead notes as an odd feature of the western notion of fair play that it takes account of the other competitors' weaknesses and that it does not allow one to beat a weak opponent:

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*Rawls gives no argument for equality of opportunity in the original position, and does not include alternatives to it in the list of principles from which the persons in the original position would choose.[79] This may be because he does argue in some places for the equal-chance conception of equality of opportunity (e.g., Section 12). It is a different conception which he describes as a background institution in a just society (e.g., Section 43). The discrepancy will be discussed below.

+Simone de Beauvoir contrasts the roles of chance and opportunity nicely: "Since my life was spreading wider and wider in the world, since I knew more people, and since opportunities came my way more and more often, the part played by chance diminished to something very small."[82]

> Something had to be done about a weak opponent so that he became a strong opponent, and, if possible, a slightly stronger opponent, else there could be no fairness, and hence no honor in winning. The crude idea that the point of strength is to triumph over weakness simply doesn't fit in.... When one's opponent is stronger than oneself, maximum effort is called forth; when one's opponent is weaker, maximum effort is no longer compatible with fair play.[80]

This notion is reflected in statements made by political philosophers to the effect that the competition for positions ought to turn on "natural features that all men might reasonably be expected to have, at least in some degree".[81] It is sometimes presented as part of the concept of competition itself:

> ...[I]f the equivalent of '5 points' is given to one applicant for a job, that might be considered within the limits of a competitive edge; if the equivalent of '75 points' is given, that might be considered a means of eliminating competition altogether.[83]

Both Rawls and Lloyd Thomas invoke fairness in developing their equal-chance conceptions of equality of opportunity, but neither give an account of why fairness requires the provision of equal chances of success. This requirement is seemingly taken for granted by many writers on the subject. Hancock's statement of the position is entirely typical:

> If one views society as a competitive contest, then the demand for justice takes the form of a demand that the competition be a fair one, in the sense that all ideally should start from the same initial position, and all should have equal chances for success.[84]

Equal chances of success may well be a recognized precept in certain kinds of games and pastimes, which are played for the challenge, entertainment, mental or physical exertion, or comradeship involved. The close match of skills in these contests is necessary to these goals being realized. It is also a recognized precept in contests where it is important that the victory turn on alleged moral qualities rather than natural

prowess. The competition for positions does not fall into either of these categories.* Nor do other competitions which serve independent economic, social, political or cultural goals. No one thinks any less of the Tchaikowsky Competition because outrageously bad pianists have not been outfitted with the sort of qualifications which would give them some chance of winning. It is not thought unfair that William Kashtan is not given the same chance of becoming prime minister as Joe Clark and Pierre Trudeau. It is because there is a discrepancy among candidates that the competition exists; to give each candidate an equal chance of success defeats the purpose of the competition.

On the other hand, a picture of the proponents of the equal chance conception as gamblers gone amok is not accurate; they may not be advocating expanding the role of the fortuitous per se, but rather making use of the fortuitous to ensure fairness of some sort. We do allow that lotteries are appropriate decision-making procedures in other grave matters, to determine, say, who is called up in a draft (not to mention the hackneyed example of the overcrowded lifeboat), and in not-so-grave matters, such as the allotment of hunting permits. These cases have the following characteristics in common: there are no clearly pertinent reasons -- either none at all or a plethora of conflicting claims -- for selecting one person over another for the burden or benefit in question; a contest on any grounds which gave persons the opportunity to strive to win would be gruelling, gruesome or otherwise inappropriate; the gains and losses are of approximately the same value to all; and the fulfillment of a vital social

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*That it does not fall into the latter category is argued in more detail below.

goal does not depend on who is selected but rather on a selection being made. None of these conditions holds unequivocally in the case of the allotment of socio-economic positions, and certainly none necessarily. There are good reasons for allowing particular persons with particular preferences, needs and abilities to hold particular positions. The competition itself need not be inhumane, its harshness being a function of other social and economic arrangements, and not an intrinsic feature of competitions. For instance, it seems that a society in which differences in income are due to differences in the demand for special skills and abilities and the differences are no greater than is necessary to call forth the supply to fill that demand could not be perjoratively labelled 'competitive'.[85] While there is a concensus on which are the more desirable socio-economic positions, there is enough variety in persons' preferences and needs for particular kinds of work that movements up or down the hierarchy of economic positions will not be of the same value to all.

If the overriding concern were that all persons perceived the outcome to be absolutely fair, a lottery might be appropriate, since lotteries and the like can be shown to be completely fair in the sense of producing random, bias-free outcomes, and their outcomes are unambiguous. But fairness takes many forms, depending on the situation it governs -- a fair judge is not one who gives each accused person an equal chance of acquittal, but one who accords the accused due process. It does not seem fair that personal choice and efficiency be sacrificed so that the outcome will be unequivocal.*

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*Choice and efficiency are related: "...restraints on people's freedom to choose their occupations lower the efficiency of specialization whenever the restraints are effective and keep at least one person from the occupation he would have chosen in the absence of restraints. In other words, such restraints inflict a loss on society either by lowering the amount of services rendered with a given sacrifice or by requiring a greater sacrifice for obtaining a given amount of services."[86]

VI

In the preceding sections a particular meaning of 'equality of opportunity' was argued for based on a tripartite analysis of opportunity as a kind of right and on an honorific interpretation of equality. It was argued that conceptions of equality of opportunity which saw equality of opportunity calling for a determinate outcome, be it an outcome patterned after certain personal characteristics or the result of giving every competitor an equal or fair chance, were not true to the history or current practice of equality of opportunity. The ideals these conceptions proposed were found to be undesirable and impractical. It has been argued that the indeterminate conception, the view that the function of equality of opportunity is to rule out invidious obstacles in the competition for positions, is compatible with the history and practice of equality of opportunity, that invidiousness does single out those characteristics which have been and are ruled out as obstacles in the competition for positions in the name of equality of opportunity. It still remains to be shown why under this conception equality of opportunity is worth pursuing.

The obvious recommendation to make on behalf of the indeterminate conception of equality of opportunity is that by placing opportunities in the framework of rights and liberties it adds to individual freedoms. It removes certain obstacles to all in the pursuit of advantaged positions and so should, like other freedoms, enhance human happiness and dignity.* To begin with, even the most ardent libertarian would concede that not all societal arrangements which take the form of rights are desirable just by virtue of taking that form. More importantly, the opportunities in question in equality of opportunity are opportunities to acquire

*Rawls refers to "the rights of fair equality of opportunity" and sees them as part of the freedoms a society offers.[87]

scarce positions. Removing more obstacles will not put more people in the advantaged positions; at most it can, depending on the obstacles ruled out, put different people in the advantaged positions than would otherwise be there. Unlike other rights and freedoms guaranteed to us by society, the rights subsumed under equality of opportunity can benefit directly only a small proportion of those to whom the rights are guaranteed. Perhaps having the opportunity itself is valuable per se just as other freedoms are valued even when they cannot be exercised. Perhaps this is so: Fiss, Nagel and Nielsen argue that one of the great injustices of discrimination on the basis of characteristics which are inherent is the inevitability of losing; on the other hand some such as Schaar and Rawls find unfair any system which encourages "propensities and aspirations that it is bound to repress and disappoint".*[88] The indeterminate conception then, by not specifying what kind of people ought to be placed in the advantaged positions, makes it more difficult to predict who will fail or succeed, but the removal of some of the inevitability of the outcome does not entail an overall gain in the control which persons have over their lives when they are engaged in a competition against each other.

Invidiousness may be thought a strange criterion for determining which obstacles are to be ruled out. For example, if the opportunities can be exercised by only a few, then shouldn't the few be those who can put the opportunities to best use? The position that opportunities should go to those with the relevant characteristics was criticized in previous sections. I mention it again here to point out that invidiousness is not such an unusual criterion in the area of rights. The right to vote, for instance,

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*"The equal opportunity principle, with its emphasis on success, probably does stir many men to excesses of hope for winning and despair at losing. It certainly leaves the losers with no external justification for their failures, and no amount of trying can erase the large element of cruelty from any social doctrine which does that."89

is not accorded on strictly relevant grounds; those with more intelligence and education may be better qualified to cast votes but to exclude others from voting would be invidious. Those under eighteen years of age cannot vote because they do not on the whole possess those qualities necessary to casting an informed ballot, but to distinguish between those over and those under eighteen is not invidious at this time in this context. However, illiterates or persons without fluency in the language(s) of the country are usually not excluded because to do so would be invidious. The same is true of other rights and freedoms such as freedom of religion and the right to raise a family -- invidiousness takes precedence over relevance in determining which obstacles are and are not removed. Consequently, that equality of opportunity should rule out invidious distinctions, rather than irrelevant ones, is entirely within the western tradition of rights.* And in theory, market forces have a tendency to bring those with the relevant qualifications to the advantaged positions (or rather to make certain positions advantaged in order to attract the persons with the relevant qualifications to them), making a determinate conception of equality of opportunity otiose.

Invidiousness may appear to be a short-sighted criterion, varying with the exigencies of the current situation and the level of consciousness of the excluded sectors, and reflecting not the requirements of fairness or justice but the pragmatic concern to maintain a cohesive society. I think that this is true, and that equality of opportunity is itself a short-sighted institution which has evolved as a result of reactions to an unjust situation but which offers only a modus vivendi rather than a fairer outcome. The demand for equality of opportunity arises as one sector of society recognizes that it has been systematically excluded from the

*As it happens, many irrelevant distinctions are invidious, and the fact that a particular distinction is irrelevant may contribute to its invidiousness: irrelevance and invidiousness are not entirely independent.

advantaged positions, that this exclusion is to the advantage of the sector in power, and that there is no sound reason for their continued exclusion from the advantaged positions; in the end the same number of persons suffer the stigma, frustration and material disadvantages of exclusion, and so invidiousness is created again as another sector becomes aware that it need not be excluded from the more desirable positions. Although excluded groups demand equality of opportunity in the name of relevance, their prior exclusion has also been in the name of relevance. Relevance has not provided and does not provide a benchmark such that at some point equality of opportunity can be said to have been completely and finally attained either, as argued above. Irrelevance carries no more moral force as a criterion for ruling out obstacles than does invidiousness, and inefficiency less pragmatic incentive for change than an angry, alienated sector of society.*

If equality of opportunity as practised is merely a stop-gap measure to avoid invidious outcomes is there any ideal underlying the practice which aims at a more equitable outcome to the competition for positions? In other words, is the practice of equality of opportunity all that it might be?

Consider the circumstances under which equality of opportunity is called for. There is a hierarchy of positions calling for different skills and aptitudes which are the product of the individual's genetic endowment, societal factors and personal inclinations. The hierarchy is steep, the stakes are high and losses are usually irreversible. Is there an equitable way of biasing the outcome of such a competition involving such benefits and burdens? What grounds for distribution are there commensurate with

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*For instance, the push for better quality science and technology in the States triggered by the launching of Sputnik ignored the wasted talents of women and Blacks; angry people were the cause of these talents being brought on to the market.

outcomes of such consequence? There is no reason good enough for making one person a fifty-cent-an-hour lettuce picker and another an eighty-thousand-dollar-a-year dentist. As was argued in the previous chapter, outcomes resulting from the application of conventional moral principles can do nothing to improve the justice of the outcome. A superficial treatment of the problem, one which mitigates the injuries without confronting the basic injustice, is not only explicable but unavoidable when the remedy is restricted to alterations in the outcome of the competition.

The indeterminate conception is not one which societies have consciously, intentionally arrived at -- in fact it is at odds with the popular image of equality of opportunity as a measure essential to the fair distribution of goods and privileges. To argue that the indeterminate conception is the correct conception of equality of opportunity is not to imply that those who advocate equality of opportunity do so without any moral concerns but only as a matter of prudence. The point is that the vehicle they have chosen for reform cannot substantially alter the justice of the competition for positions, and their moral concerns are misplaced. There are, however, many parallels between the indeterminate conception and Rawls's ultimate formulation of equality of opportunity as a matter of pure procedural justice; the practices they entail are similar and neither aim for a uniquely right or correct outcome. But Rawls does see equality of opportunity as an essential part of a just society, and not just a pragmatic device for coping with a defective system. Why?

The types of equality of opportunity which Rawls <u>initially</u> argues for, that access to positions should be on the basis of talent and motivation, is a form of imperfect procedural justice -- i.e., there is a precept specifying the correct outcome, but no guarantee that the correct outcome can always be arrived at.[90] (This early formulation of equality of

opportunity takes the form of a precept of justice; such precepts, Rawls argues in Section Seventeen, "are at the wrong level of generality. In order to find suitable first principles one must step behind them."[91]) None of his remarks about this conception should be taken as an argument for it, he warns, as he is concerned merely "to prepare the way for the favored interpretation of the two principles so that these criteria ... will not strike the reader as too eccentric or bizarre ".[92] In the favored interpretation, "the role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice".[93] Pure procedural justice obtains, Rawls says, "when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed".[94] Although Rawls does seem to think that there is an independent criterion for the right result in the case of equality of opportunity -- i.e., that positions are allotted according to talent and motivation -- he prefers in the end to treat equality of opportunity as though this were not so:*

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*Rawls, as Nozick notes,[95] gives no reason for persons in the original position (i.e., the initial situation which best expresses the conditions that are widely thought reasonable to impose on the choice of principles) wanting to accept the procedure which Rawls says will produce equality of opportunity. While a person in the original position may have no interest in proposing principles which arbitrarily deny certain types of persons access to privileged positions, 96 he has no interest in requiring that measures be taken to ensure that persons from all sectors of society have access to the privileged positions -- it is no more rational for him to provide that his position be the outcome of his genetic endowment than the outcome of his race or his family's wealth. It is, however, in his interest to ensure that whatever the procedure be, the outcome not be invidious, for the ensuing ill will will detrimentally affect virtually everyone's well being. It is also to his advantage to ensure that human resources are distributed efficiently, but this is something which market forces ought to bring about, and does not require special arrangements in the name of justice.

> It is evident that the role of the principle of fair equality of opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself, even within a restricted range. Now the great practical advantage of pure procedural justice is that it is no longer necessary in meeting the demands of justice to keep track of the endless variety of circumstances and the changing relative positions of particular persons.[97]

Perhaps his reason for abandoning the precept is to be found later where he argues that:

> ... in this kind of procedural justice the correctness of the distribution is founded on the justice of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it. A distribution cannot be judged in isolation from the system of which it is the outcome or from what individuals have done in good faith in the light of established expectations. If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires is better than another, then there is simply no answer to this question.[98]

How can we know whether a particular procedure warrants being called equality of opportunity? And why should this procedure be expected to provide anything which is fair? Judging by the background conditions which he sees necessary to a just procedure, Rawls seems to be relying to some extent, but not entirely, on the allegedly discarded precept to shape the procedure. The background conditions which he calls for are arrangements for "policing the conduct of firms and private associations and ... preventing the establishment of monopolistic restrictions and barriers to the more desirable positions";[99] "a number of inheritance and gift taxes" and restrictions on the right of bequest";[100] "similar chances of education and culture for persons similarly motivated" and the keeping of "positions and offices open to all on the basis of qualities and efforts reasonably related to the relevant duties and tasks".[101] Also reflected in these arrangements is the dictum that a system of pure procedural justice cannot

be faulted on the basis of individual outcomes but only "from the standpoint of a relevant representative man in some particular position".[102] Thus when equality of opportunity is made a matter of pure procedural justice it then requires equal life prospects for those similarly endowed and motivated only among various sectors of society, not among equally endowed and motivated individuals.[103]

There is no explicit account of why equality of opportunity should be instituted in the name of fairness in Rawls's system. On the basis of his initial account of the need for equality of opportunity, the practices advocated to implement it, and the nature of the remainder of the system of justice, it seems reasonable to assume that its role is to help ensure that those in the advantaged positions have the skills and motivation to justify those positions being advantaged. The difference principle requires that social and economic inequalities be arranged so that they are to the greatest benefit of the least advantaged. The purpose of the advantages is "to cover the cost of training and to encourage the efforts of learning, as well as to direct ability to where it best furthers the common interest".[104] Since Rawls states in a number of other passages that equality of opportunity requires that the costs of education be assumed by society,[105] making it unnecessary to compensate individuals for these costs, it seems that the advantages are just only if they are awarded to persons with the appropriate talent and motivation. In other words, equality of opportunity in justice as fairness functions as a corollary to the difference principle. In fact this must be the role of equality of opportunity if the system of justice is to be coherent since any principle justifying the existence of advantaged positions cannot be combined with an independent principle specifying who should get these advantaged positions.

As a corollary to the difference principle the equal opportunity requirement has no independent status as a principle of justice. But for the difference principle there is no reason to believe that it would be required in the system of justice. Although it is a corollary it is not, however, necessary to the satisfaction of the difference principle: if there are inequalities that are not to the greatest benefit of the least advantaged, then the advantages can be removed, rather than persons found with appropriate qualifications to justify the advantages.

Rawls, however, does treat equality of opportunity as though it had an independent status, giving it priority over the difference principle.[106] But just as he does not present any arguments for incorporating equality of opportunity into his system of justice in the first place, he fails to give any arguments for the priority of equality of opportunity. Furthermore, if equality of opportunity were to have priority over the difference principle, the difference principle would be inoperable since any inequalities sanctioned by the difference principle would make equality of opportunity unobtainable between sectors of society because of the effect a person's initial socio-economic status has on his prospects.[107]

In the preamble to his system of justice Rawls presents equality of opportunity as though it were the prime concern, and the difference principle a means of compensating for its shortcomings. He admits that "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune".[108] Furthermore, he says, as long as the institution of the family exists "it is impossible in practice to secure equal chances of achievement and culture for those similarly endowed".[109] Rawls believes that the difference principle, by ensuring that inequalities are to the advantage

of the least advantaged, overcomes these two defects as it "mitigates the arbitrary effects" of the natural lottery",[110] "reduces the urgency to achieve perfect equality of opportunity",[111] and "redefines the grounds for social inequalities".[112] However, the inequalities are justified only if they are attracting people with the appropriate talent and motivation to the advantaged positions; if there is inequality of opportunity such that the opportunities to gain the advantaged positions are not a function of talent and motivation alone, then the inequalities are unjust. Consequently the difference principle cannot compensate for the practical shortcomings of equality of opportunity. More importantly, if the outcome of equality of opportunity is "arbitary from a moral perspective"[113] as Rawls alleges, then the difference principle, by sanctioning the inequalities among positions, by legitimizing the giving of advantages to those already advantaged, compounds the arbitariness of the natural lottery, even though the inequalities benefit the least advantaged also. Given all the above considerations, it cannot be concluded that equality of opportunity is a requirement of justice in Rawls's system, although it does serve a useful purpose in it.

Some philosophers would agree that the role of equality of opportunity is to rule out certain obstacles or criteria in the competition for positions, but attribute the unfairness of these obstacles to their being beyond the control of the competitors rather than to their being invidious. Feinberg, Nagel and Nielsen, for instance, take this view.[114] Many, like them, share Frankena's view that it is unjust to "treat people differently in ways that profoundly affect their lives because of differences for which they have no responsibility".[115] However, there does not appear to be any feature common to characteristics for which persons are responsible which makes

them appropriate grounds for profoundly affecting their lives in different ways. In fact, most of the characteristics for which we are responsible -- from the brand of our underwear to the length of our fingernails -- would seem not to warrant grossly differential treatment. Not only are some characteristics for which we are responsible silly grounds for allotments of consequence, some would make unacceptable grounds as far as our fundamental freedoms and rights are concerned. We are, for instance, responsible for our political and religious beliefs, but to artificially pattern distributional shares after these beliefs would be to seriously curtail our freedom of thought and religion. Consequently, responsibility for a characteristic does not appear to be an appropriate sufficient condition for making that characteristic a ground for differential treatment. Secondly, the principle is sometimes cited in order to rule out aristocratic, racial, sexual and meritocratic criteria, and usher in individual need as the primary morally acceptable criteria for the allotment of positions;[116] however, we usually are not responsible for the existence of our needs -- and to the extent that we are responsible for them, we are usually held culpable, as in the case of the motorcycle gangster in need of medical treatment for injuries sustained in fights, or persons who breed to excess in need of social assistance. Whether there is an obligation to treat people according to their needs, most would agree that at least, ceteris paribus, it is not unjust to treat people in this way. This principle would also exclude egalitarian distributions based on persons' common humanity, their "minimum capacity for the sense of justice"[117] or the "fact that all men are similarly capable of experiencing a good or bad life"[118], since it is hard to see in what sense we could be taken to be responsible for any of these qualities. And so it does not seem reasonable

to make responsibility a necessary condition either for making a characteristic the basis for differential treatment.

That is is unjust "to treat people differently in ways that profoundly affect their lives because of differences for which they have no responsibility" is a position seldom argued for, for all that it is invoked. Perhaps its prima facie appeal stems from its stature as a principle of retributive justice*: inasmuch as it is unjust to 'punish the innocent' so it is thought to be unjust to assign persons to the lower socio-economic positions for reasons which are not their fault. The importance of this principle in retributive justice is linked to the purposes of the latter; traditionally they have been taken to be to provide retribution for the culpable act, to reform the perpetrator, and to deter others from committing the same act by creating an unpleasant situation for the perpetrator. By contrast, the role of equality of opportunity in distributive justice is to determine who will end up in the better and worse-off positions that various societal forces create independently. Equality of opportunity cannot be construed as a procedure for assigning deterrents, for deterrents must be successful in order to be called 'deterrents'; if equality of opportunity had some success in deterring persons from acting in particular ways by threatening them with the prospect of holding the lower socio-economic positions, then other means would have to be found for filling these positions -- success as a deterrent would entail failure as a distributive mechanism. Reform cannot be the goal of distributive justice since the

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*'Retributive justice' is used in this context to refer to the broad area of justice concerned with the dispensing of reward and punishment, not to a particular theory about reward and punishment.

perpetrators of the undesirable acts would be placed in the lower positions which do not require, and even discourage the exercise of those abilities which would qualify them for better positions. Above all, none of the alleged purposes of retributive justice can be incorporated among the purposes of distributive justice since the hierarchy of socio-economic positions to be allotted exists prior to and independent of the commission of acts for which individuals can be held responsible; the positions will not be commensurate with the value or disvalue of the acts. In Rawlsian terms, retributive justice, if it is to fulfill its purposes, ought to be a matter of perfect or imperfect procedural justice, with an independent criterion for assessing the justice of the outcomes and means which are more or less efficacious of arriving at these outcomes; the outcomes must be tailored to the relevant characteristics of the individuals being dealt with.[119] Given that the hierarchy of positions is formed independent of characteristics of individuals, it does not seem inappropriate -- whether or not the individual is responsible for these characteristics -- to make distributive justice a matter of what Rawls calls pure procedural justice, where there is no independent criterion for assessing the outcome but where a fair procedure can be devised for arriving at an outcome.*

While the principle that it is unjust to treat people differently in matters of consequence because of characteristics for which they are not responsible is usually taken to be a fundamental moral principle and as such is seldom argued for, Fiss does try to show why this principle deserves acceptance as a principle for the allocation of positions.[121] First of all,

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*Rawls makes distributive justice a matter of pure procedural justice not for this reason however, but because he sees too many practical and administrative problems in patterning outcomes after individual characteristics.[120]

he argues, the principle "reflects a rejection [sic] of any views of innate inferiority".[122] More accurately, however, the principle simply ignores the issue. At any rate, to deny that some persons are innately inferior in important respects is to deny reality. Secondly, he claims, the principle reflects

> ... a commitment to the principle that it is desirable to judge individuals on the basis of criteria that are within his [sic] reach. Each individual should, at least at some point in his life, have the power or capacity to put himself in the position of satisfying the criterion. Individual control is a value because it provides the prospect for upward mobility, an important incentive to self-improvement and efficient performance. Further, it is valuable because it rationalizes, and thus makes more tolerable, the unequal distribution of status and wealth among people in the society: failure is the individual's own fault. The principle that the individual should control his own fate also assumes that the allocation of scarce employment opportunities represents, to some extent, a reward. The reward may serve an instrumental purpose; it may be an incentive to develop the necessary qualities or skills or to perform well. Or the reward or allocation may be, for the individual, an end in itself.[123]

His dictum that "it is desirable to judge individuals on the basis of criteria that are within his reach" is difficult to challenge, but whether it can appropriately be applied to the allocation of positions is a less abstruse, more manageable issue. When we are judging persons on the basis of their moral worth qua persons, we are usually attempting to judge them on the basis of actions or characteristics for which they are responsible, making allowances for genetic and environmental influences which are beyond their control. The question is whether this is the appropriate way to judge them for the purpose of allotting socio-economic positions. The Tchaikowsky Competition would be no more just for using criteria which each individual would be capable of satisfying at some time or other. And as Schaar, for instance, notes, following this dictum "certainly leaves the losers with no external justification for their failures, and no amount of

trying can erase the large element of cruelty from any social doctrine which does that".[124] The dictum may not even make sense in allocations of scarce goods: is it reasonable to say that each of x number of persons has the good in question within his reach when only one of them can obtain the good? To argue that individual control provides "an important incentive to self-improvement" is to take for granted the nature of the criteria -- in addition to the concern that those who put the most effort into advancement thereby show their unsuitability for advancement, the possibility that the traits used as criteria for advancement may themselves be odious has to be taken into consideration.* This is, however, only a possibility, not a necessary outcome; the inevitable disvalue is that when all the characteristics necessary to advancement are entirely within the individual's reach the incentive to conform to the prevailing ethos will be highly effective. That the dictum "rationalizes" inequalities can be only an alternative to the incentive justification rather than a supplementary justification: if the inequalities are appropriate incentives, then no spurious excuses are needed: if the inequalities are not incentives, then perhaps they should not be excused. The principle that the individual should control his own fate, rather than assuming that scarce employment opportunities should be allocated as rewards, is not compatible with such a practice, a practice which is intended to control people's behavior by reinforcing one kind of activity and attaching heavy penalties to another. Not all behavior which is under the control of the individual should be subject to reward and

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*Far from encouraging self-improvement, Schaar argues, criteria presently used encourage "more and more people to contribute more and more energies toward the realization of a mass, bureaucratic, technological, privatized, materialistic, bored, and thrill-seeking, comsumption-oriented society".[125]

punishment, or values such as autonomy and diversity among persons will be jeopardized*, but Fiss implicitly assumes that the more behavior rewarded or punished the better. And since reward is a retributive rather than distributive notion it is not, as argued above, appropriate to the constraints and purposes of distributive justice, the distribution of positions in particular.

There is more to Fiss's position, however; after stating his reasons for judging individuals on the basis of characteristics for which they are responsible he says that failing to judge individuals this way is not "sufficient to generate unfairness".[126] If the characteristics in question are, in addition to being beyond the control of the individual, not accurate predictors of productivity, then their use as criteria is unfair; unrelatedness to productivity and the absence of individual control are jointly sufficient conditions for unfairness, in his view. His reason for ruling out characteristics unrelated to productivity is utilitarian, i.e., that "it will foster society's interest in efficiency -- producing the greatest number of goods and services at the lowest cost".[127] His final

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*The association of the practice of judging persons on the basis of characteristics for which they have no responsibility with inequality of opportunity may be due not so much to the alleged injustice of this practice but to the fact that when it is thought that persons are judged on the basis of characteristics for which they are responsible liberty rather than equality of opportunity is invoked. Thus discrimination in employment on the basis of race or sex is seen as an infringement of equality of opportunity while discrimination on the basis of political beliefs is a curtailment of liberty. Homosexuality is an interesting borderline case: if it is thought that persons should not be denied positions because they are homosexuals, then equality of opportunity will be invoked if homosexuality is considered an irreversible disease, and liberty if homosexuality is seen as a matter of choice.

position then seems to belie his initial advocacy of the value of an individual controlling his own fate, for he ends up committed to the position that this value can be ignored as long as the pragmatic interest of efficiency is served. No reasons are offered for the two attributes being jointly "sufficient to generate unfairness", just reasons why each might be unfair. The possibility that each is a bit unfair and when compounded the two are grossly unfair is ruled out by his explicit denial that some unfairness can be found in each:

> I do not mean to suggest that either attribute by itself would be sufficient to generate unfairness. For example, there may be nothing unfair about making promotion or layoff decisions purely on the basis of seniority, though such decisions may be inefficient. Similarly, there may be no unfairness in refusing to hire an individual because of a physical deformity that is related to productivity, even though that deformity is congenital or the result of a vicious attack by another.[128]

Admittedly the two attributes jointly encompasses many of those characteristics which are ruled unfair bases for the allotment of positions in the name of equality of opportunity, such as race and sex (although leaving out others such as religion), but it seems that Fiss has failed to isolate the reason for these characteristics being considered illegitimate obstacles in the competition for positions.

VII

The role of equality of opportunity according to the indeterminate conception is thus a limited one. Equality of opportunity, however, does enjoy more esteem than can be accounted for by its role in eliminating invidiousness, but this can be attributed to the benefits for which it is indirectly responsible. While the association of equality of opportunity with egalitarianism has been merely a rhetorical rather than a historical or practical one, it has, because of the invidious outcomes produced by the unequal distribution of inherited wealth, brought about greater economic equality. It has also enhanced the welfare of those in the less advantaged positions by guaranteeing a certain standard of education to all regardless of their circumstances. Depending on the sorts of restrictions operating prior to its implementation, equality of opportunity may broaden the choice of positions open to various groups of people, which enhances efficiency as well as individual autonomy. However, given that any allotment of positions in the hierarchy is potentially invidious, that as one invidious distinction is eliminated another emerges, many of the gains brought about by equality of opportunity are transient. For instance, job ghettos, which are created when one stigmatized group of people can obtain employment in competition with other groups of people only by working for substantially less than the latter groups, can be altered when equality of opportunity provides the previously stigmatized group with some mobility, but this group will likely only be replaced by another, and the ghetto will persist.[129] Greater fraternity and cohesiveness are made possible by equality of opportunity, but only between particular groups and not throughout society as a whole; the locus of the rift will change along the lines of the emerging invidious distinctions. That there are these secondary benefits does not augment

the role of equality of opportunity, for each of these benefits can be justified and implemented independently.

Far from being a sine qua non of fairness in the competition for positions, a just society should be able to dispense entirely with equality of opportunity as an explicit social doctrine. If, for instance, market economies were in fact strictly regulated by the principles invoked to justify them, if differences in wages were completely attributable to incentives, then the outcome of the competition would not be invidious, for no one could reasonably resent not being put in a position where he would be entitled to incentives. If income is fair compensation for costs incurred, there is no motive for wanting an opportunity to incur such costs per se.[130] Even efficiency in the distribution of positions would obviate the need for equality of opportunity, since efficiency requires that there be no restraints of any sort on people's choice of occupation.* Or if there were not an invidious division of labour in the society to begin with, it is unlikely that there would be invidious allotments of positions. Were a variety of tasks differing in their demands and satisfactions assigned to each position, there would be virtually no demand for equality of opportunity.+ Equality of opportunity is based on misplaced moral concerns. The invidiousness which motivates it is misdirected, focussing on those who are successful in the competition, rather than on the framework of the competition itself.

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*"Guarantees of free entry and non-discrimination, the provision of free education and training, the levying of progressive inheritance taxes, and all other measures aimed at creating more equal opportunities for all insure not only greater equity but also greater efficiency."131

+cf. Thomas Nagel: "If the social esteem and economic advantages attaching to different occupations and educational achievements were much more uniform, there would be little cause for concern about racial, ethnic, or sexual patterns in education or work."132

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